



passage of time without administrative or judicial relief continues to injure Entergy, the brief additional period of abeyance requested herein (45 days) is acceptable in light of the substantial benefits of a potential resolution.

Entergy therefore requests that the Court continue the abeyance until December 15, 2017, unless the parties reach an impasse prior to that time, and Entergy moves the Court to dissolve the abeyance. Alternatively, if the Court is not convinced to continue the abeyance, Entergy respectfully requests that the parties be allowed to propose a prompt but reasonable briefing schedule to resume briefing of both the extant motions for stay and the merits.

### **STATUS REPORT**

1. The final rule under review here, “Promulgation of Air Quality Implementation Plans; State of Arkansas; Regional Haze and Interstate Visibility Transport Federal Implementation Plan” (the “FIP”), 81 Fed. Reg. 66,332 (Sept. 27, 2016), would require four coal-fired units at two power plants in Arkansas that are co-owned and operated by Entergy to install and operate approximately \$2 billion of pollution controls to achieve imperceptible improvements to visibility at several wilderness areas. *See* Entergy’s Motion to Stay (Docket No. 4499749) at 2-3. Because of these onerous and unlawful requirements, Entergy and others petitioned the U.S. Environmental Protection Agency (“EPA”) to reconsider and administratively stay the FIP and, subsequently, moved the Court for a stay. *Id.* at 1.

2. After the stay motions were filed with the Court, EPA partially granted administrative reconsideration of the FIP and agreed to issue a 90-day administrative stay. *See* 78 Fed. Reg. 18,994 (April 25, 2017). The partial grant of reconsideration and administrative stay provided the window of opportunity that led the parties to seek a period of abeyance in the first place, which was granted. The Parties subsequently sought extensions of the abeyance through October 31, 2017, which also were granted.

3. During the abeyance period, the parties have been working in parallel paths on several elements of an overall resolution, which may ultimately include: two parts of a regional haze State Implementation Plan (“SIP”) developed by the State of Arkansas to replace the FIP, and associated administrative agreements; a settlement agreement with EPA to resolve the instant litigation; and, potentially, a separate agreement between Entergy and the Conservation Groups (petitioners Sierra Club and National Parks Conservation Association).

4. The parties have made the following progress:

a) Arkansas proposed “Part I” of a SIP intended to replace provisions of the FIP establishing nitrogen oxide (“NO<sub>x</sub>”) emission limits at certain power plants. *See* <https://www.adeq.state.ar.us/air/planning/sip/regional-haze.aspx>. The public comment period for Part I of Arkansas’ SIP revision ended on August 14, 2017. *Id.*

b) EPA proposed to approve the Part I SIP and withdraw the correlating provisions in the FIP. *See* 82 Fed. Reg. 42,627 (Sept. 11, 2017). The public comment period on EPA's proposed approval of the Part I SIP ended on October 11, 2017. *Id.* If finalized by Arkansas and ultimately approved by EPA, the Part I SIP will address some claims in the instant matter and therefore narrow the issues before the Court.

c) Arkansas proposed "Part II" SIP intended to replace the remaining portions of the FIP. *See* <https://www.adeq.state.ar.us/air/planning/sip/regional-haze.aspx>. The public comment period for the Part II SIP ends on January 2, 2018. *Id.* If finalized by Arkansas and ultimately approved by EPA, the Part II SIP could moot the remaining claims in this litigation.

d) EPA proposed to extend the deadline for achieving the NO<sub>x</sub> emission limits at certain power plants from April 27, 2018, to January 27, 2020. 82 Fed. Reg. 32,284 (July 13, 2017). The public comment period on this proposal ended September 22, 2017. This process is parallel to the State's SIP revision addressing the same NO<sub>x</sub> emission limits. *Id.* at 32,285.

e) Entergy and the Conservation Groups have made progress towards resolving certain claims among them that may facilitate a resolution of the FIP litigation.

f) Entergy is aware of numerous discussions among the parties concerning various elements of an overall settlement.

5. For the reasons stated in Entergy's Motion to Stay, the FIP continues to injure Entergy. However, Entergy believes that sufficient progress is being made towards resolution of the FIP litigation to warrant a brief additional period of abeyance. For example, Arkansas' Part I and II SIPs, if ultimately approved by EPA, would likely moot all of the parties' claims. Associated agreements between some or all of the parties could provide a schedule for completing all necessary administrative actions to achieve that result. The benefits of a potential resolution that avoids the need to litigate the FIP justify 45 additional days of abeyance.

6. The additional proposed time—to December 15, 2017—will not adversely impact visibility in Class I areas. The Clean Air Act's regional haze program and the FIP are *solely* concerned with *visibility* impairment in Class I federal areas, not public health. *See, e.g.*, 42 U.S.C. § 7491. The Arkansas Class I areas are already below their reasonable progress goals for visibility, and the emissions limitations imposed by the FIP on Entergy's plants would not yield any discernable improvements in visibility. *See, e.g.*, Entergy's Motion to Stay (Docket No. 4499749) at 22 & Exhibit 9 (Jewell Declaration) at ¶¶12-13.

7. Entergy notes that the Conservation Groups have previously argued that the state and federal administrative actions described above may simply lead to more litigation. *See, e.g.*, Conservation Group's Status Report (Doc. No. 4560193) at 3-4. Even were that true, it is not an argument against continuing the abeyance here; such litigation would involve a different dispute in a new case. Additional litigation is not a

foregone conclusion, in any event, as the parties should continue to work towards a global resolution to the extent possible.

8. If the Court is not inclined to continue the abeyance, Entergy requests an opportunity for the parties to propose a prompt but reasonable briefing schedule to resume briefing of both the motions for stay and the merits.

### CONCLUSION

For the foregoing reasons, Entergy respectfully request that the Court continue the abeyance until December 15, 2017, unless the parties reach an impasse prior to that time and Entergy moves the Court to dissolve the abeyance.

Dated: October 31, 2017

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

The undersigned counsel states that Fed. R. App. P. 27(d)(2)(A) does not apply but that, in any event, this status report contains 1141 words, excluding the caption, table of contents, table of authorities, list of exhibits, glossary of terms, signature blocks, and certificates of compliance and service as counted by a word processing system and, therefore, is within the word limit for motions. This response also complies with typeface and type-style requirements of Fed. R. App. P. 32(a)(5)-(6) because it has been prepared in a proportionally spaced typeface in 14-point Garamond.

Dated: October 31, 2017

/s/ Timothy K. Webster

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Mississippi Inc., and Entergy Power, LLC*



**CERTIFICATE OF SERVICE**

I hereby certify that the copies of the foregoing Status Report by Entergy Arkansas, Inc., Entergy Mississippi, Inc., And Entergy Power LLC was served, this 31st day of October, 2017, through CM/ECF on all registered counsel.

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